

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erin Sweeney	Team: Squad #9	CCRB Case #: 201506936	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 08/17/2015 5:35 PM	Location of Incident: West 148th Street between Amsterdam and Convent Avenues	Precinct: 30	18 Mo. SOL 2/17/2017	EO SOL 2/17/2017	
Date/Time CV Reported Mon, 08/17/2015 7:51 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 08/17/2015 7:51 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Leonid Pysin	07845	942386	NARCBMN
2. DT3 Keith Knight	02886	920469	NARCBMN
3. SGT John Mejia	01253	928770	NARCBMN

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Mejia	Abuse: Sgt. John Mejia stopped § 87(2)(b)	
B.DT3 Keith Knight	Abuse: Det. Keith Knight stopped § 87(2)(b)	
C.DT3 Leonid Pysin	Abuse: Det. Leonid Pysin stopped § 87(2)(b)	
D.SGT John Mejia	Force: Sgt. John Mejia tightly handcuffed § 87(2)(b)	
E.DT3 Keith Knight	Abuse: Det. Keith Knight threatened § 87(2)(b) with the use of force.	
F.DT3 Keith Knight	Discourtesy: Det. Keith Knight spoke discourteously to § 87(2)(b)	
G.DT3 Keith Knight	Abuse: Det. Keith Knight threatened to arrest § 87(2)(b)	
H.SGT John Mejia	Abuse: Sgt. John Mejia threatened § 87(2)(b) with the use of force.	
I.SGT John Mejia	Discourtesy: Sgt. John Mejia spoke discourteously to § 87(2)(b)	
J.SGT John Mejia	Abuse: Sgt. John Mejia threatened to arrest § 87(2)(b)	
K.SGT John Mejia	Abuse: Sgt. John Mejia searched § 87(2)(b)	
L.DT3 Keith Knight	Abuse: Det. Keith Knight searched § 87(2)(b)	
M.DT3 Leonid Pysin	Abuse: Det. Leonid Pysin searched § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		

Case Summary

On August 17, 2015, at approximately 5:35 p.m., § 87(2)(b) was walking east on West 148th Street between Amsterdam Avenue and Convent Avenue in Manhattan. § 87(2)(b) was stopped by Sgt. John Mejia, Det. Keith Knight, and Det. Leonid Pysin of Manhattan Borough Narcotics (**Allegations A-C**). § 87(2)(b) alleged the following: Sgt. Mejia tightly handcuffed § 87(2)(b) (**Allegation D**). The officers were very close to § 87(2)(b) when he was trying to explain that he was on his way to an appointment and did not have any drugs on him, and some spit accidentally exited his mouth and landed on the officers. Det. Knight said, “If you do that again, I’m going to knock your fucking teeth out” (**Allegations E-F**). Sgt. Mejia said, in reference to the spit, “You did it to me again! I’m going to fuck you up—that’s the second time you did that” (**Allegations H-I**). Both Det. Knight and Sgt. Mejia told § 87(2)(b) to stop spitting, or else he would be arrested (**Allegations G and J**). Sgt. Mejia, Det. Knight, and Det. Pysin reached inside his pockets (**Allegations K-M**). § 87(4-b) § 87(2)(g)

§ 87(2)(b) was not arrested or issued a summons. On the day following this incident, § 87(2)(b) went to the doctor to have his wrists examined, as he was still experiencing pain from the handcuffs. § 87(2)(b) was diagnosed with a fractured left wrist (Privileged Documents 1).

There is no video footage in this case.

Mediation, Civil and Criminal Histories

- This case is not eligible for mediation, as § 87(2)(b) sustained a fracture to his wrist while in police custody (Privileged Documents 1).
- On October 20, 2015, a FOIL request indicated that no Notice of Claim had been filed in regard to this incident (Board Review 7).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 9).
- Sgt. Mejia has been a member of service for 14 years and has seven total cases with 19 total allegations. In case 200812060, physical force and stop allegations were pleaded, and they were exonerated. In that case, a discourtesy allegation was also pleaded, and it was unsubstantiated. In case number 201007193, a stop, frisk, and threat of arrest were alleged, and they were exonerated. Also in that case, discourtesy and search allegations were pleaded, and they were unsubstantiated (Board Review 10).
- Det. Knight has been a member of service for 17 years and has six total cases with 15 total allegations. In case number 200715007, a search allegation was pleaded, and it was unsubstantiated. In that case, a stop allegation was also made, and it was exonerated. In case number 201303443, two discourtesy allegations were pleaded, and one was closed as complainant uncooperative, and the other as unsubstantiated (Board Review 11).
- Det. Pysin has been a member of service for nine years and has six total cases with 12 total allegations. In case number 200704145, a stop was alleged, and it was exonerated. In case number 2010003287, a stop allegation was pleaded, and it was

closed as complaint withdrawn. In case number 20108568, a stop, frisk, and search were alleged, and they were exonerated (Board Review 12).

Findings and Recommendations

Explanation of Subject Officer Identification:

- § 87(2)(b) described the first officer who made contact with him as a black or Hispanic male in his late twenties or early thirties who stood 5'6" tall, with a medium to stocky build, and dark curly hair (Board Review 1). Sgt. Mejia is a § 87(2)(b)-old Hispanic male who stands 5'6" tall, weighs 173 pounds, and has brown hair and brown eyes (Board Review 13). § 87(2)(b) also alleged that this officer threatened him with the use of force, spoke discourteously to him, and searched him. Sgt. Mejia acknowledged stating that he told § 87(2)(b) he would arrest him for disorderly conduct. § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
- § 87(2)(b) described the officer who said, "If you do that again, I'm going to knock your fucking teeth out," as a black male in his early-to-mid thirties who stood 5'9"-5'10" tall, with a medium build, short hair, a slight mustache and beard (Board Review 1). Det. Knight is a § 87(2)(b)-old black male who stands 5'9" tall, weighs 195 pounds, and has a bald head (Board Review 14). § 87(2)(b) also alleged that this officer stopped and searched him. Det. Knight acknowledged stating that he would arrest § 87(2)(b) for disorderly conduct. § 87(2)(g)
§ 87(2)(b)
- § 87(2)(b) described the third officer who was with Sgt. Mejia and Det. Knight as a white male in his late twenties to early thirties who stood approximately 6'0" tall, with a medium build, brown hair, and a Russian accent (Board Review 1). Det. Pysin is a § 87(2)(b)-year-old white male who stands 6'0" tall, weighs 215 pounds, and has brown hair, brown eyes, and a Russian accent (Board Review 15). § 87(2)(b) also alleged that this officer searched his pockets and his bag. § 87(2)(g)
§ 87(2)(b)

Allegation A—Abuse of Authority: Sgt. John Mejia stopped § 87(2)(b)

Allegation B—Abuse of Authority: Det. Keith Knight stopped § 87(2)(b)

Allegation C—Abuse of Authority: Det. Leonid Pysin stopped § 87(2)(b)

§ 87(2)(b) stated that he was walking from his apartment, which is located on § 87(2)(b), to the subway at West 148th Street and St. Nicholas Avenue. § 87(2)(b) was planning on taking the subway to a doctor's appointment in lower Manhattan. He was running late, and took out his cell phone and was deciding if he should call the office and say he was on his way. He read his texts on his phone, and paced back and forth as he read them. § 87(2)(b) explained that by pacing, he meant he was walking two to three feet in each direction. He thought he did this for two or three minutes. He then crossed Amsterdam Avenue and continued walking eastward toward Convent Avenue. § 87(2)(b)'s phone was low on minutes, so he walked back to the west side of Amsterdam Avenue, where there is a payphone. He decided not to use the payphone and crossed back to the east side of Amsterdam Avenue. He then continued walking eastward on the south side of West 148th Street

toward Convent Avenue and the subway. As he was walking on the sidewalk, one or two unidentified individuals ran past him on his right side. § 87(2)(b) stepped into West 148th Street because the people rushing by him made him nervous. Approximately two seconds after he stepped into the street, he felt a hand on his right shoulder. An officer identified as Sgt. Mejia moved him closer to the parked cars on the south side of the street. Prior to being stopped, § 87(2)(b) had not spoken to or exchanged anything with anyone (Board Review 1).

§ 87(2)(b) stated that she first saw § 87(2)(b) when he was walking in the street, directly next to the cars parked on the side of the street. § 87(2)(b) was walking on the sidewalk, and the width of the parked cars was the only distance between § 87(2)(b) and § 87(2)(b). § 87(2)(b) stated that she thought § 87(2)(b) was “totally normal,” and said he looked like he might be entering one of the parked cars along the street. § 87(2)(b) never saw § 87(2)(b) pacing or in a phone booth. § 87(2)(b) did not have anything in his hands, and he never stopped walking. § 87(2)(b) did not see § 87(2)(b) drop anything. Two male individuals, whom § 87(2)(b) later learned were plainclothes officers, ran toward § 87(2)(b) and § 87(2)(b) from the opposite direction. One officer, identified via investigation as Det. Knight, pushed § 87(2)(b) against a parked vehicle. Det. Knight did not have his shield out, and § 87(2)(b) did not know that he was an officer. An officer identified via investigation as Sgt. Mejia approached § 87(2)(b) and told her to move out of the way because § 87(2)(b) was dangerous. Sgt. Mejia also did not have out his shield, and § 87(2)(b) asked who he was. He showed her his shield and said he was a police officer. § 87(2)(b) did not obtain his shield number because she could see how “animated” this officer was becoming, and she felt that if she did not move, he would hurt her (Board Review 3). Both § 87(2)(b) and another independent witness, § 87(2)(b) stated that § 87(2)(b) told them that he was pacing before the officers stopped him (Board Review 2 and 3).

Det. Knight prepared a stop, question, and frisk report for § 87(2)(b). Det. Knight wrote that the period of observation prior to the stop was three minutes, and the duration of the stop was two minutes. Under “crime suspected,” he wrote the abbreviation for criminal possession of a controlled substance. In the “Contributing Factors that Led to Stop” section, Det. Knight checked “other” and wrote “Looking at objects in phone booth.” Boxes were checked to indicate that the officers identified themselves verbally and with their shields. Handcuffs were used to detain § 87(2)(b) and he was not arrested or issued a summons. § 87(2)(b)’s demeanor was described as “irate.” Under the section titled “Remarks made by person stopped,” Det. Knight wrote, “Fuck you!” In the narrative section, Det. Knight wrote: “Suspect walked in a phone booth on two separate occasions, pulling an object out of his pocket and looking at them.” The box for “Was person frisked?” was checked, and for the reason he was frisked, Det. Knight checked the “other” box instead of “object observed suspected of being a weapon,” “statement by suspect,” “suspect known to carry weapons,” or “violent crime.” In the narrative section following the checked “other” box, Det. Knight wrote, “suspect adjusted his waistband and was observed looking at an object in his hand” (Board Review 16).

Det. Knight stated that the officers were conducting a narcotics operation in the area where § 87(2)(b) was stopped, as it is a drug-prone location. He could not provide specific streets where drug activity is highest, but said that most of the time, his team works between West 145th Street and West 151st Street on and around Amsterdam Avenue. He could not provide specific locations where drugs are known to be bought and sold besides the corners. The officers were sitting in a parked car on the south side of West 148th Street, a few car lengths west of

Amsterdam Avenue. Det. Knight was in the driver's seat, while Det. Pysin was sitting in the front passenger seat, and Sgt. Mejia was in the backseat on an unknown side. Det. Knight stated that he first saw § 87(2)(b) when he was inside of a phone booth that was approximately two car lengths in front of the officers' parked car. Nothing was blocking Det. Knight's view of § 87(2)(b). Det. Knight thought that he was the first officer to observe § 87(2)(b) but he did not say anything to Det. Pysin and Sgt. Mejia because, "There is nothing abnormal about being in a phone booth." After approximately one minute after Det. Knight first observed § 87(2)(b) § 87(2)(b) walked away from the phone booth, looked at an object in his hand, and crossed from the west side of Amsterdam Avenue to the east side. Det. Knight could not see what was in § 87(2)(b)'s hand. Det. Knight stated that based on his eight years in Narcotics, he thought that § 87(2)(b) might have been calling someone to meet him so that he could buy or sell drugs. Det. Knight never saw § 87(2)(b) use a phone, and he never saw § 87(2)(b) approach anyone. After § 87(2)(b) walked to the east side of Amsterdam Avenue, he then walked back to the west side. Det. Knight could not see what § 87(2)(b) did on the east side of Amsterdam Avenue. As § 87(2)(b) § 87(2)(b) walked westward toward the detectives, § 87(2)(b) was still looking at the object in his hand. Det. Knight still could not see what the object was. § 87(2)(b) went back into the same phone booth. Det. Knight did not say anything about § 87(2)(b) or his observations; he testified that he did not have to, because Det. Pysin and Sgt. Mejia had also noticed § 87(2)(b)'s behavior, which Det. Knight described as peculiar. Sgt. Mejia stated, "It looks like this guy is engaging in some kind of Narcotic activity. Let's go talk to this guy and see what he is doing." Det. Knight estimated that they observed § 87(2)(b) for approximately three minutes before Sgt. Mejia stated that they were going to stop § 87(2)(b). Det. Knight never mentioned observing § 87(2)(b) adjusting his waistband as a reason for stopping him (Board Review 5).

Sgt. Mejia stated that he had observed § 87(2)(b) "on more than two occasions coming from Narcotic-prone locations." Both of those observations took place approximately one month before this incident. Sgt. Mejia could not recall where exactly he had previously seen § 87(2)(b). Sgt. Mejia had never stopped § 87(2)(b) before, and to his knowledge, no Narcotics detective had ever stopped § 87(2)(b) before this incident. Sgt. Mejia stated that drugs are bought and sold on the west side of Amsterdam Avenue between West 147th and West 148th Streets. He refused to provide the specific locations where drugs were being bought and sold because "active undercover sales are being bought from there right now." Sgt. Mejia testified that he first saw § 87(2)(b) at the southwest corner of West 148th Street and Amsterdam Avenue, which was approximately eight car lengths away from the officers. Sgt. Mejia stated that he was in the front passenger seat, Det. Knight was driving, and Det. Pysin was somewhere in the backseat. He then saw § 87(2)(b) walk westward toward the phone booth located approximately two car lengths away from Amsterdam Avenue, and six car lengths away from the officers' vehicle. § 87(2)(b) was looking in every direction. Sgt. Mejia recognized § 87(2)(b) as the male he had seen on two previous occasions coming from "active Narcotics sets where people are buying and selling drugs." There was no discussion regarding Sgt. Mejia's recognition of § 87(2)(b) and Sgt. Mejia did not know if Det. Knight or Det. Pysin recognized § 87(2)(b). After § 87(2)(b) reached the phone booth, he looked up and down West 148th Street. Sgt. Mejia observed § 87(2)(b) looking at small white objects that appeared to be packaged in a small clear plastic bag. § 87(2)(b) was holding both of his hands in front of him, and he was holding the bag with his fingers. Sgt. Mejia was certain the objects were white, but could not see the shape of the objects or how many there were. Sgt. Mejia thought that the objects were crack-cocaine. Sgt. Mejia did not notice anything else in § 87(2)(b)'s hands, and did not recall seeing § 87(2)(b).

§ 87(2)(b) with his phone. Sgt. Mejia observed § 87(2)(b) walk eastward to Amsterdam Avenue, stop in the middle of the street, and then walk back to the west side of Amsterdam Avenue to the same phone booth. When § 87(2)(b) reached the phone booth for the second time, he continued to look at the objects inside of his hands. Sgt. Mejia and the detectives had a conversation about the white objects, but Sgt. Mejia could not recall anything that was said. He was uncertain if the detectives saw the white objects. Sgt. Mejia told his detectives that they were going to stop § 87(2)(b). Det. Pysin exited the vehicle and followed § 87(2)(b) from behind, while Sgt. Mejia and Det. Knight continued in the vehicle. As Sgt. Mejia passed § 87(2)(b) in the car, § 87(2)(b) threw the plastic bag of white objects on the ground. Sgt. Mejia could not say what hand § 87(2)(b) used or describe the motion he used to throw the bag. The detectives' car pulled in front of § 87(2)(b) to cut him off. Sgt. Mejia exited the vehicle and said, "Police! Stop!" Sgt. Mejia was the first to stop § 87(2)(b). Det. Pysin was behind § 87(2)(b) and did not touch him to stop him. Sgt. Mejia placed his hand on § 87(2)(b)'s arm and started to guide him toward a parked car (Board Review 6).

Det. Pysin stated that he does not know much about the area where § 87(2)(b) was stopped because Det. Pysin usually works with a different Narcotics team at a different location. The officers were parked two-to-four car lengths westward of West 148th Street and Amsterdam. Det. Pysin was sitting in the front passenger seat, and he could not recall where Sgt. Mejia or Det. Knight were sitting. Det. Pysin first noticed § 87(2)(b) walking eastbound on West 148th Street, and then saw him enter a phone booth at the corner of West 148th Street and Amsterdam. § 87(2)(b) was looking around, and looked like he was looking or waiting for someone on the street. § 87(2)(b) then walked to the east side of Amsterdam Avenue before crossing back to the west side. Det. Pysin did not have a clear view of him at all times. He acknowledged that he could not see § 87(2)(b) inside of the phone booth, and also stated that he was not the observing detective or the one who decided to stop him, so he was not paying much attention to § 87(2)(b). Sgt. Mejia, Det. Knight, and Det. Pysin had a conversation in the vehicle about what § 87(2)(b) was doing and if he was trying to meet somebody. Det. Pysin could not say who observed § 87(2)(b) first, and all of the officers were verbalizing what they saw § 87(2)(b) doing so that "everybody would be on point." Det. Pysin could not recall if he saw § 87(2)(b) on his phone. Sgt. Mejia and Det. Knight decided to stop § 87(2)(b). Det. Pysin exited the vehicle and followed behind § 87(2)(b) to see if he dropped any contraband. Sgt. Mejia and Det. Knight stayed in the car, drove in front of § 87(2)(b) and stopped § 87(2)(b) before Det. Pysin reached § 87(2)(b) (Board Review 4).

To stop an individual, an officer must possess reasonable suspicion that a person has committed, is committing, or is about to commit a crime. Reasonable suspicion is based on specific and articulable facts that would motivate a prudent and cautious person to believe that criminal activity is afoot People v. Cantor 36 N.Y. 2d 106 (1975) (Board Review 17). Factors such as sweating profusely, pacing back and forth, and "surveillance consciousness" are susceptible to innocent interpretation and do not constitute the founded suspicion necessary to effect a stop People v. Boyd 594 N.Y. 2d 147 (1993) (Board Review 18).

Det. Knight stated that § 87(2)(b) was approximately two car lengths from the officers when he first saw § 87(2)(b). Det. Pysin stated that he thought that the phone booth § 87(2)(b) entered was two-to-four car lengths from the officers. Neither Det. Knight nor Det. Pysin stated that they could see what § 87(2)(b) had in his hand. Only Sgt. Mejia, who testified that the phone booth § 87(2)(b) entered was six car-lengths from the officers' car, stated that he could see that § 87(2)(b) was holding small white objects. All of the officers testified that they

discussed § 87(2)(b)'s behavior as they were observing him, and neither Det. Knight nor Det. Pysin stated that Sgt. Mejia said he saw § 87(2)(b) with white objects in his hand. Sgt. Mejia was also the only officer who testified that he saw § 87(2)(b) throw objects on the ground. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation D—Force: Sgt. John Mejia tightly handcuffed § 87(2)(b)

§ 87(2)(b) stated that upon being stopped, he put up his hands and said that he had nothing to hide. Sgt. Mejia placed § 87(2)(b) in handcuffs approximately one-to-two minutes after they stopped him. When § 87(2)(b) asked the officers why he was placed in handcuffs, they said that he was resisting and not cooperating. The handcuffs were so tight that § 87(2)(b)'s right hand went numb and his left hand was in a great deal of pain. Sgt. Mejia and at least one other officer § 87(2)(b) was unsure which one) moved him around and gripped his wrists. § 87(2)(b) thought that they were intentionally causing him pain. The day following this incident, § 87(2)(b) went to his primary care provider and complained of pain to his left wrist, his right shoulder, and the front of his head. X-rays were done, and he was diagnosed with a small fracture in his left wrist (Privileged Documents 1).

§ 87(2)(b) an independent witness who was walking her dog when she heard § 87(2)(b) and the officers talking, stated that the officers grabbed § 87(2)(b)'s hands, turned him around, and were trying to put his hands behind his back. § 87(2)(b) was tensing his arms and yelling that they had the wrong guy and did not need to handcuff him. Within a few seconds, § 87(2)(b) was handcuffed. Two officers placed § 87(2)(b) in handcuffs, but § 87(2)(b) could not describe these officers. § 87(2)(b) said several times that the handcuffs were too tight and were hurting him. No officer ever responded to his complaints of pain or adjusted his handcuffs in any way (Board Review 2).

§ 87(2)(b) stated that after Sgt. Mejia told her to leave, she walked approximately 100 feet away from § 87(2)(b) and the officers. She continued to watch the incident. Sgt. Mejia and Det. Knight asked to see § 87(2)(b)'s hands. § 87(2)(b)'s hands were out in plain view, and he did not have anything in his hands. § 87(2)(b) never saw § 87(2)(b) swing at an officer. Early in the incident, an officer (she could not recall which one) placed § 87(2)(b) in handcuffs. After the incident, § 87(2)(b) approached § 87(2)(b) and asked if he was okay. § 87(2)(b) complained to her about being in pain from the handcuffs (Board Review 3).

Sgt. Mejia stated that when he stopped § 87(2)(b) § 87(2)(b) looked at him and said, “What the fuck do you want?” When Sgt. Mejia placed his hand on § 87(2)(b)'s arm to guide him from the street to the sidewalk, § 87(2)(b) slapped Sgt. Mejia's hand off of his arm. After § 87(2)(b) smacked away his hand, Sgt. Mejia placed his hand back on § 87(2)(b)'s arm and told § 87(2)(b) to calm down. When Sgt. Mejia placed his hand on § 87(2)(b)'s arm, he felt § 87(2)(b) tense his hands and clench his fists. Sgt. Mejia said, “Cuff him,” and Sgt. Mejia and

Det. Pysin immediately handcuffed § 87(2)(b). Sgt. Mejia decided to handcuff § 87(2)(b) because he slapped Sgt. Mejia's hand off of him, and Sgt. Mejia thought that when § 87(2)(b) tensed his arms, § 87(2)(b) might swing at the officers. Sgt. Mejia also handcuffed § 87(2)(b) because § 87(2)(b) began "intentionally spitting" at the officers immediately after he smacked away Sgt. Mejia's hand. § 87(2)(b) never complained about his handcuffs or being in any pain. Nothing to Sgt. Mejia's knowledge happened during this incident that could have led to § 87(2)(b) sustaining an injury to his wrist (Board Review 6).

Det. Knight stated that he did not see who handcuffed § 87(2)(b) because by the time Det. Knight approached § 87(2)(b) he was already in handcuffs. Det. Knight estimated that § 87(2)(b) was in handcuffs for three to four minutes. Det. Knight denied hearing § 87(2)(b) complain of being in pain. Det. Knight never grabbed § 87(2)(b) by the handcuffs or saw any other officer do this (Board Review 5).

Det. Pysin stated that when they stopped § 87(2)(b) he was very aggressive and uncooperative. He seemed nervous. Det. Pysin could not recall what § 87(2)(b) was saying, but he knew he was cursing. § 87(2)(b)'s hands were "all over the place," and he repeatedly tried to put his hands in his pockets. The officers were afraid there might have been sharp objects or drugs inside of his pockets. Det. Pysin explained that § 87(2)(b) could have reached into his pockets, taken out drugs or contraband, and destroyed them. § 87(2)(b)'s demeanor made Det. Pysin feel unsafe. Det. Pysin could not recall seeing any bulges on § 87(2)(b). § 87(2)(b) was handcuffed to protect the officers' safety. Det. Pysin could not recall if he handcuffed § 87(2)(b) or who handcuffed him. He could not recall who made the decision to place § 87(2)(b) in handcuffs. Det. Pysin thought that § 87(2)(b) was handcuffed approximately one minute into the stop, and that the entire stop lasted three to five minutes. § 87(2)(b) was never moved after he was handcuffed (Board Review 4).

If someone is being merely detained and not arrested, handcuffing is permissible only when the police have an objective credible reason to believe that the individual being detained is armed, dangerous, or attempting to flee. Offering slight resistance does not provide officers with a reason to forcibly handcuff an individual People v. Blanding N.Y. App. Division, First Department (2014) (Board Review 19).

§ 87(2)(g)

Allegation E—Abuse of Authority: Det. Keith Knight threatened § 87(2)(b) with the use of force.

Allegation F—Discourtesy: Det. Keith Knight spoke discourteously to § 87(2)(b)

Allegation G—Abuse of Authority: Det. Keith Knight threatened to arrest § 87(2)(b)

Allegation H—Abuse of Authority: Sgt. John Mejia threatened § 87(2)(b) with the use of force.

Allegation I—Discourtesy: Sgt. John Mejia spoke discourteously to § 87(2)(b)

Allegation J—Abuse of Authority: Sgt. John Mejia threatened to arrest § 87(2)(b)

§ 87(2)(b) stated that as he was speaking to the officers, the officers were very close to his face. § 87(2)(b) accidentally spat on Det. Knight as he was speaking. Det. Knight said, “If you do that again, I’m going to knock your fucking teeth out.” Sgt. Mejia said, “You did it to me again! I’m going to fuck you up—that’s the second time you did that!” § 87(2)(b) explained that he did not intend to spit at the officers; he was talking fast and the officers were very close to his face. He noted that he would never intentionally spit at officers (Board Review 1).

§ 87(2)(b) stated that the officers were rude, abusive, and instigating. They were trying to make § 87(2)(b) angrier. There was a “ridiculous back-and-forth” between § 87(2)(b) and the officers, where one of the officers (she could not describe which one) said, “Oh, you want to hit me? You said you wanted to fucking hit me?” and § 87(2)(b) responded, “I never said I wanted to hit you!” (Board Review 2).

§ 87(2)(b) stated that the officers were screaming at § 87(2)(b). They repeatedly said, “You have something,” and “We saw you.” § 87(2)(b) responded, “I don’t have anything—I was just walking to the train station.” The officers were “right on top of” § 87(2)(b) when they were speaking to him. The officers were asking him about drugs. § 87(2)(b) never saw § 87(2)(b) spit on any officer, and she never heard any officer say anything to § 87(2)(b) about spitting. § 87(2)(b) could not recall if she heard any officer use profanity. She never heard any officer say anything about arresting § 87(2)(b) and she never heard § 87(2)(b) say anything about suing the officers (Board Review 3).

Det. Pysin stated that § 87(2)(b) was waving his arms and spitting while speaking to the officers, but § 87(2)(b)’s spitting was a byproduct of him speaking and did not appear intentional. The officers had to back up a few steps to avoid the spit. When § 87(2)(b) was spitting while talking, he was not addressing any officer in particular—he was speaking to all of the officers. Some spit landed on Sgt. Mejia, and Sgt. Mejia responded, “Stop spitting. Talk normally. You spat on me.” Det. Pysin did not recall how § 87(2)(b) responded to this comment. Det. Pysin denied hearing any officer say anything similar to “I’m going to knock your fucking teeth out,” or use any profanity (Board Review 4).

Det. Knight stated that when he approached § 87(2)(b), Sgt. Mejia was explaining to § 87(2)(b) that they saw him doing things that were indicative of drug activity. § 87(2)(b) did not seem to listen, and said, “Why the fuck am I in handcuffs?” Det. Knight tried to calm him down by explaining why they stopped him. § 87(2)(b) told Det. Knight to “Go fuck himself,” and spat in his face. Det. Knight thought that § 87(2)(b)’s spitting was intentional. § 87(2)(b)’s saliva landed on Det. Knight’s face, but he did not prepare an exposure report. Det. Knight said to § 87(2)(b), “Sir, if you spit in my face again, you will be arrested.” When asked what § 87(2)(b) could have been charged with, Det. Knight paused for approximately six seconds before saying, “disorderly conduct.” Det. Knight denied saying, “If you do that again, I’m going to knock your fucking teeth out,” or anything similar, and he did not hear Det. Pysin or Sgt. Mejia say this. Det. Knight was uncertain if § 87(2)(b) spat on any other officer, but either Sgt. Mejia or Det. Pysin (he could not recall which one) told Det. Knight after the incident that § 87(2)(b) had spat on him (Board Review 5).

Sgt. Mejia stated that § 87(2)(b)’s spitting was not just a byproduct of him talking—he was intentionally spitting at the officers. Sgt. Mejia said that § 87(2)(b) was told to stop spitting, and § 87(2)(b) continued to spit. The spitting began immediately after § 87(2)(b) smacked away Sgt. Mejia’s hand. Spit landed on Sgt. Mejia and Det. Knight. Sgt. Mejia and Det. Knight told § 87(2)(b) to stop spitting or else he would be arrested. Sgt. Mejia testified that he would have charged § 87(2)(b) with disorderly conduct. Sgt. Mejia denied saying, “If you don’t stop

spitting, I'm going to fuck you up," or "I'm going to knock your fucking teeth out," or anything similar, and he never heard a detective say either of these things. Sgt. Mejia denied using or hearing any detective use profanity during this incident (Board Review 6).

§ 87(2)(g)

A person may be charged with disorderly conduct only when the situation extends beyond exchange between disputants to a point where it becomes a potential or immediate public problem People v. Weaver 16 NY 3d 123 (2011) (Board Review 20). Furthermore, for a person to be guilty of disorderly conduct, there must be evidence that their person's actions were designed to provoke, or had the potential to provoke, an incident involving a group of individuals People v. Gonzalez NY Slip Op 05515 (2015) (Board Review 21).

§ 87(2)(g)

Allegation K—Abuse of Authority: Sgt. John Mejia searched § 87(2)(b)

Allegation L—Abuse of Authority: Det. Keith Knight searched § 87(2)(b)

Allegation M—Abuse of Authority: Det. Leonid Pysin searched § 87(2)(b)

§ 87(2)(b) stated that Sgt. Mejia placed him against a parked vehicle and told him to stay calm while they asked him some questions. Sgt. Mejia told § 87(2)(b) that he was stopped because he smelled like PCP. § 87(2)(b) denied ever using or selling drugs, and said it was impossible for him to smell like PCP. § 87(2)(b) repeatedly told the officers that he did not have anything on him and that he was on his way to an appointment. § 87(2)(b) said, "I didn't do anything," and Sgt. Mejia replied, "That's what everybody says." Inside of his pockets, § 87(2)(b) had his cell phone, keys, wallet, and loose change. Sgt. Mejia then reached inside of all of § 87(2)(b)'s pants pockets—the two in the front, and two in the back—and removed the items. Det. Knight and Det. Pysin also reached inside of § 87(2)(b)'s pants pockets. He could not say who searched which pockets when, but he was certain that all of the officers reached inside of his pockets during the incident. No officer ever asked § 87(2)(b) if they could touch him or reach inside of his pockets, and § 87(2)(b) never consented to the officers' search of his pockets. No one ever told him to take his hands out of his pockets. After the officers searched his pockets, § 87(2)(b) told the officers to give him a drug test and to search his bag. Sgt. Mejia and Det. Pysin

searched his bag, and as they were searching, § 87(2)(b) told them to find the card that proved he was on his way to a scheduled appointment. The officers did not find the appointment slip. They gave up without finding anything and let him go (Board Review 1).

§ 87(2)(b) stated that after the officers pushed § 87(2)(b) up against a van, § 87(2)(b) repeatedly said, “Check my bag! You have the wrong guy! You’re making a huge mistake. Check my bag—I have a letter in my bag—I’m on my way to an appointment.” One officer (she was unsure which one) searched § 87(2)(b)’s pockets, while another searched his bag (Board Review 2).

§ 87(2)(b) stated that the officers patted down § 87(2)(b)’s legs and searched all of his pockets. An officer took § 87(2)(b)’s bag around the corner on Convent Avenue, where § 87(2)(b) could not see the officer or the bag. When § 87(2)(b) spoke to § 87(2)(b) after the incident, he opened his bag, and § 87(2)(b) saw that his water bottle and pen had been broken during the incident (Board Review 3).

Sgt. Mejia stated that after stopping § 87(2)(b) Det. Pysin canvassed for approximately five minutes for the objects that Sgt. Mejia saw § 87(2)(b) drop. When asked how it was determined that § 87(2)(b) did not have drugs on him, Sgt. Mejia stated, “We canvassed the area where he threw the drugs. We could smell PCP emanating from him, but he did not have anything on him.” When asked again how it was determined that he did not have any drugs on him, Sgt. Mejia said, “Well, we searched him. We searched his pockets, and he did not have anything on him.” Sgt. Mejia denied searching § 87(2)(b)’s pockets, and could not recall who searched his pockets. Sgt. Mejia could not recall who retrieved § 87(2)(b)’s wallet. Sgt. Mejia denied searching § 87(2)(b)’s bag, and stated that he never saw either detective search the bag (Board Review 6).

Det. Knight stated that he was the last officer to approach § 87(2)(b) as he had to park the car. As Det. Knight was walking to § 87(2)(b) he could hear § 87(2)(b) saying, “What the fuck are you stopping me for? Go fuck yourself! I’m not telling you a motherfucking thing!” § 87(2)(b) was already in handcuffs when Det. Knight approached him. As he walked closer to § 87(2)(b) he could smell PCP emanating from him. Det. Knight did not fear for his safety because § 87(2)(b) was already in handcuffs. Det. Knight asked § 87(2)(b) for his identification, and § 87(2)(b) said, “Fuck you, my ID is in my pocket.” Det. Knight asked § 87(2)(b) which pocket, and § 87(2)(b) told him. Det. Knight reached into the pocket, retrieved his wallet, took out his identification, and wrote down his information for the stop, question, and frisk report. Det. Knight denied touching anything other than the wallet in this pocket, and denied reaching into any other pocket. The only time he reached into his pocket was to retrieve his identification. Det. Knight explained that prior to him taking out his identification, “It was determined that § 87(2)(b) did not have what we thought he had.” When asked how this was determined, Det. Knight stated, “Um—well—I did not—Det. Pysin was the first one who—um—he was the first one who approached him, so he—he told me that he had nothing. I don’t know what interaction he had with him. I was just going on [Det. Pysin’s] word that § 87(2)(b) had nothing.” Det. Knight denied seeing any other officer enter § 87(2)(b)’s pockets. Det. Knight did not search § 87(2)(b)’s bag, and he never saw another officer search his bag. Det. Knight did not recall § 87(2)(b) saying anything about an appointment slip (Board Review 5).

When Det. Pysin was asked if § 87(2)(b) was frisked, Det. Pysin stated, “I think so. I would frisk him—of course.” When asked why he would have frisked § 87(2)(b) Det. Pysin stated, “I wanted to see what he was hiding in his pockets.” He then stated he could not recall if someone frisked § 87(2)(b) When asked if he frisked § 87(2)(b) Det. Pysin said, “I don’t

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Squad: 9

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date